IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.12.2004

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.37465 OF 2004

Indra ... Petitioner

Vs

The State,
Rep. by the Inspector of Police,
Bagayam Police Station ... Respondent
(Cr.No.1121/2004)

* * *

Criminal Original Petition filed under Section 482 Cr.P.C. for the relief as stated therein.

* * *

For Petitioner : Mr.L.Mahendran
For Respondent : Mr.A.N.Thambidurai,
Govt.Advocate(Crl.side)

* * *

O R D E R

This petition has been filed under Section 482 Cr.P.C. to direct the respondent police to transfer the case in Crime No.1121 of 2004 on the file of Bagayam Police Station to C.B.C.I.D.

2. The case of the petitioner is that the deceased Uma is her elder daughter; that she is an uneducated girl and was employed as servant maid in the house of one Monoharan, a retired Professor, who is a resident of Otteri, Vellore; that from the date of joining as a servant maid in the house of Manoharan, she was not sent to her parental house; that they would escort her to the petitioner's house occasionally and stay in the house for an hour and would take the deceased back to their house.

3. The petitioner would further submit that while so, on 15.9.2004 at about 1.00 p.m. the petitioner's father, Paul Mohan and the village boy one Gobi came in a car and informed about the death of her elder daughter Uma at the residence of Manoharan; that at about 4.45 p.m. Paul Mohan took the petitioner in the said car to Vellore

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Government Hospital; that only after completion of post-mortem, the body of the deceased was handed over to the petitioner; that prior to the post mortem, the body was not shown to the petitioner and her relatives; that the post mortem was completed and the body was handed over to them and no statement was recorded from the petitioner; that the petitioner has strong suspicion in the death of her daughter ; that the case has been registered under Section 174 Cr.P.C. based on the complaint given by Manoharan; that without proper investigation, the police is trying to close the case ; that she gave a fresh complaint on 17.9.2004 at Bagayamm Police station in C.S.R.No.321 of 2004 suspecting the death of her daughter in Manoharan's house ; that so far no investigation has been done in the case and hence, the petitioner has filed the above criminal original petition for the relief stated supra.

4. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.side) contra and perused the materials placed on record.

5. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this Court is able to assess that it is a case of death of an unmarried girl of about 20 years of age under suspicious circumstances at the place of residence of her master. The petitioner, the mother of the deceased, would say that because of poverty, her elder daughter Uma, the deceased, had been sent as a servant-maid at the residence of one Manoharan and under suspicious circumstances she died and the family members of the master of the deceased informed her father on 15.9.2004 at about 10.00 p.m. that her daughter was dead at the residence of her master, the said Manoharan; that the deceased was taken to the Vellore Government Hospital and only after Post Mortem examination, she was allowed to see her deceased daughter; that since very strong mystery shrouds around the death of her daughter, not being satisfied with the explanation offered for her death by her master and the respondent police since they attribute the death of her daughter for suicide by hanging, she has come forward to file the above Criminal Original Petition seeking a direction to transfer the investigation of the case registered in the respondent's Cr.No.1121/2004 to CBCID since no progress has been made in the investigation by the respondent.

6. In fact, the reason attributed for the death of the daughter of the petitioner is suicide by hanging committed at 6.00 a.m. on 15.9.2004 and it has been reported at 8.00 a.m. on the same day. The master of the deceased at whose residence the death had taken place figures as the complainant. The reason attributed on his part for such a conclusion to be arrived at is that it was a suicide by hanging; that a few days prior to the incident, her parents arranged for the marriage of the deceased with a boy whom she did not like and hence she had taken the extreme step and by hanging herself in the

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bathroom of his house with her own sari she had died. This reason attributed on the part of the complainant would be vehemently denied by the mother of the deceased who would come forward to say that a few days prior to her end, when they wanted to see her, two members of the complainant's household brought the deceased to their residence and keeping her within their control and in their presence to discuss anything with her just for an hour and they again took her along with them and therefore the version of the complainant does not infuse confidence to brand the death of the deceased as a suicide.

7. Two aspects are to be ruled out in the death of an unmarried lady under suspicious circumstances without any strong eye-witness to the occurrence and without leaving any note which could be relied on. The first one being whether there has been any sexual violence - physical or mental or both - meted out to the deceased particularly when the occurrence had not taken place at her parental abode but at the place of work in the house of her master where no one from her family or known circle could be of any help to the helpless girl. Since no witness comes forward to speak to these aspects within the reach of the investigation, particularly when the respondent has not made any inroads and is keeping quiet standing where the FIR has been framed without getting any clue, it is the Post Mortem Examination which could alone throw light on the aspect of sexual or physical violence on her. But, a sorry state of affairs could only be seen from the Post Mortem investigation held by the Post Mortem Doctor viz. Dr.Satyanarayanan of Vellore Government Hospital and from the certificate issued by him.

8. At the outset, it should be mentioned that it is undesirable and unwanted and against all moral, medical and legal ethical standards to permit a male Doctor to do the Post Mortem Examination on the body of an young unmarried girl which has been permitted in this case particularly in the Government Headquarters Hospital wherein many lady doctors would be serving.

9. Secondly, the Post Mortem has not been conducted on the body of the deceased adhering to the requirements of the medical code and the legal requirements particularly since it is a medico-legal case since in cases of such nature, it is the Post Mortem Examination which has to throw light on all such grey areas which have not been cleared-off in the complaint or initial investigation to find out the causes leading to the death of the woman. But, from the Post Mortem Examination done in this case, as it comes to be revealed from the Post Mortem Report, it is clear that the same has been done in a very casual manner without even noting all those outward symptoms that are patently seen from the photographs of the deceased in the hanging position.

10. The Post Mortem Doctor does not even say that there is no external injuries on the body of the deceased thus ruling out the

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prime suspicion that would arise in any such case to rule out any physical violence on the deceased. Secondly, the vital aspect that has to be explored is to make such investigation to rule out any sexual violence or attempt made on the deceased leading to her death. But, this vital aspect has been untouched by the Doctor and absolutely no investigation in this regard has been conducted by him particularly noting down the symptoms or injuries noted in and around the genital organs of the deceased so as to rule out the possibility of physical sexual violence just prior to the death of the deceased. This magnificent lapse committed on the part of the Post Mortem Doctor leads to many a doubt uncleared exposing the case of the prosecution to a comfortable nothingness on this aspect.

11. Coming to the aspect of the theory attributed to the death of the deceased dubbing the same as suicide by hanging as per the First Information Report, mystery shrouds even regarding this aspect. On seeing the photographs of the deceased in the hanging position, this Court is able to see that the body is in the kneeling position in which it is hard or difficult to think that a suicide could be perpetrated since there is every chance for the person committing suicide to have a change of mind at the initial physical privations. It is difficult to perpetuate the suicide by hanging in the kneeling position. Further more, from the chemical analysis report, it could be seen that 'the hyoid bone is intact' thus creating more doubt in the initial conclusion arrived at on the part of the respondent to consummate the theory of suicide. On the contrary, ample chances of homicide and hanging the body thereafter in order to make it appear a suicide cannot be ruled out in the case of the death of the suicide.

12. It must be pointed out that no proper Post Mortem has been held on the part of the Doctor who performed the Post Mortem and the same is inconsistent, inadequate and irresponsibly attended to in a casual manner without unravelling many a doubt which are to be cleared. Therefore, it is better for the prosecution to have a second Post Mortem conducted by a team of Doctors headed by a highly responsible Medical Officer who is an expert in this science. Secondly, since the respondent has not taken the investigation towards its desired goal but for reasons unknown, his investigation sails along with the complaint, a change of investigation, as it is requested on the part of the petitioner, has become inevitable and hence the following order:

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In result,

(i) the above Criminal Original Petition stands allowed.

(ii) The Investigation of the case registered in Cr.No.1121 of 2004 of Bagayam Police Station is withdrawn from the respondent and transferred to the C.B.C.I.D.

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(iii) The Superintendent of Police, C.B.C.I.D, Vellore shall entrust the investigation of the case with an Officer of proven integrity and outstanding ability to carry on with the investigation so as to unearth all the hidden truth encircling the death of the daughter of the petitioner viz. Uma thus bringing out the real case to fore and to file the final report on true facts and circumstances of the case and in accordance with law.

(iv) The Director of Medical Services concerned is directed to initiate such measures against Dr.Satyanarayanan attached to the Government Hospital, Vellore for his lapses and dereliction of duty, in accordance with the disciplinary rules so as to punish him suitably.

(v) Likewise, the Superintendent of Police, Vellore is also directed to initiate such measures against the respondent for having not properly investigated the case in hand as desired under law.

vsi/Rao

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Inspector of Police,
   Bagayam Police Station,
   Vellore District

2. The Superintendent of Police,
   CBCID,
   Vellore.

3. The Director,
   Medical Services Department,
   Government of Tamil Nadu,
   Chennai.

4. The Superintendent of Police,
   Vellore.

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5. The Public Prosecutor,
   High Court,
   Madras.

+ 1 cc to Mr.L.Mahendran, Advocate SR 54018.

Order in Crl.O.P.No.37465/2004

GM(CO)
SR

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